18 August 2026

Business Taxes Stakeholder Forum (BTSF)

Phase One of Reform of Ireland's Taxation Regime for Interest

Feedback on Draft Legislation - s247 and s249 TCA 1997 – Capital Contributions

Introduction

The Irish Tax Institute welcomes the opportunity to provide further feedback to the Department of Finance as it considers potential discrete amendments to section 247 and section 249 Taxes Consolidation Act 1997 (TCA 1997) which, subject to the approval of the Tánaiste and Minister for Finance, may be progressed as part of Finance (No. 2) Bill 2026.

Our detailed comments below refer to the updated draft legislation that was circulated by the Department on 5 August 2026 relating to proposed amendments to sections 247 and 249 in respect of borrowings to fund capital contributions and related recovery of capital provisions.

However, it is important that the feedback we provided in our 1 July 2026 submission (copy attached in the Appendix) which relates to other potential amendments to sections 247 and 249 TCA 1997 is also considered and that these amendments are reflected in Finance (No.2) Bill 2026 (i.e. removal of the phrase 'defray money applied' in subsection (2); removal of the common director requirement from subsection (3) and the other suggested amendments to subsections (4), (4E) and (4F) of section 247 and a number of proposed changes to section 249).

Capital Contributions

We have reviewed the changes to the draft legislation for capital contributions, and we have summarised below the provisions which we consider require further amendment.

Section 247(2)(aa) – Relief for a loan used to make a capital contribution

It is proposed to insert a new subsection (2)(aa) to provide that section 247 will apply to a loan of money to a company used *"in making a capital contribution to a company referred to in subparagraphs (i) to (v) of paragraph (a) which is wholly owned, directly or indirectly, by the investing company, where it is reasonable to consider that the capital contribution is made for bona fide commercial purposes and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is to fund a distribution made by that company or a connected company."*

Wholly owned

As noted in our response on 1 July, the inclusion of the words "*wholly owned*" would exclude several commonly used commercial structures from qualifying for relief. For example, (i) where an employee share option plan is in place such that the investing company does not wholly own the shares in the subsidiary; (ii) the existence of preference share capital held externally to the group for funding purposes, for example, in the case of an IDA investment or (iii) capital contributions made to joint ventures. In our view, there is no clear policy rationale as to why interest on a loan to fund a capital contribution made in these scenarios should not qualify for relief. Therefore, we recommend that the word "wholly" is removed from section 247(2)(aa) TCA 1997.

Section 249(1)(a)(iii) – Reinvestment provisions

We support the proposed amendment to section 249(1)(a)(iii) TCA 1997 as it provides helpful clarification to ensure that a recovery of capital or deemed recovery of capital does not restrict relief where the recovered capital is applied by the investing company

for a qualifying purpose. We recommend that the text in section 249(1)(a)(iii)(A) is amended to align with that in section 249(1)(a)(iii)(B) as follows:

"without the investing company —

(A) using the amount recovered, or an amount equal to the amount deemed to have been recovered, in accordance with paragraphs (a), (aa), (b), (ba) or (bb) of section 247(2), or"

Section 249(2)(a)(ii)(a), 249(2)(aa)(i)(I)(A), and 249(2)(aa)(ii)(II)(a)

It is proposed that section 249(2)(a) and section 249(2)(aa) will be amended to extend the recovery of capital provisions to include capital contributions as a result of extending section 247 relief to capital contributions. As currently drafted, we believe that the inclusion of the word "*indirectly*" in sections 249(2)(a)(ii)(a), 249(2)(aa)(i)(I)(A), and 249(2)(aa)(ii)(II)(a) is too broad and will have unintended consequences. We recommend that the subsection be amended to remove the reference to "*indirectly*" and confine the extended recovery of capital rules to apply to the repayment of capital contributions where relief has been granted under section 247(2)(aa) TCA 1997.

Conclusion

The Institute would welcome the opportunity to discuss the matters raised in this submission and in our earlier submissions of 1 and 31 July to the Department relating to proposed amendments to section 247 and 249 TCA 1997 in this year's and next year's Finance Bills. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in this regard.

Business Taxes Stakeholder Forum (BTSF)

Phase One of Reform of Ireland's Taxation Regime for Interest

Draft Legislation for Potential Discrete Amendments in Finance (No. 2) Bill 2026

The Irish Tax Institute welcomes the opportunity to provide further feedback to the Department of Finance as it considers potential proposals for discrete amendments to section 247 and section 249 Taxes Consolidation Act 1997 (TCA 1997) which, subject to the approval of the Tánaiste and Minister for Finance, may be progressed as part of Finance (No. 2) Bill 2026. We note that the potential amendments seek to address certain issues which have been raised by stakeholders in respect of relief for interest as a charge on income. We have set out below our detailed comments on the potential amendments to sections 247 and 249 TCA 1997.

Capital Contributions

We welcome the proposal to extend section 247 relief to include interest costs incurred on a loan taken by an Irish parent company to fund capital contributions made to wholly owned subsidiaries.

The proposed definition of a capital contribution refers to the "*unconditional and irrevocable contribution of money to the* ***equity*** *capital of the company*". We believe that the word 'equity' should be removed from the definition as it is likely to lead to uncertainty in practice. The key commercial benefit of a capital contribution is that it can be implemented quickly and simply, and avoids the formalities associated with an issue of shares. This means that in practice capital contributions are considered to increase the reserves of the company and are usually documented as contributions to

the capital of the company rather than contributions to the 'equity' capital of the company.

Indeed, consideration should be given as to whether it is necessary to include a definition of capital contribution given the defining features of a capital contribution have been established in case law. Defining the term capital contribution is not straightforward considering the definition must also work for contributions made to companies resident outside of Ireland. For example, the Netherlands treats capital contributions received as additions to share premium.

The treatment of a receipt of a capital contribution will very much depend on where it is received. Furthermore, the accounting treatment can vary depending on the nature of the capital contribution. Notably, the term capital contribution is not defined in company law. Therefore, we would urge caution in seeking to define the term. If policymakers believe it is necessary to define a capital contribution, consideration should be given to including the term 'gift' in the definition as that is a core defining feature of a capital contribution.

It is proposed to insert a new subsection (2)(aa) providing that section 247 will apply to a loan of money to a company used *"in making a capital contribution to a company referred to in subparagraphs (i) to (v) of paragraph (a) which is* ***wholly owned****, directly or indirectly, by the investing company."*

We consider that the words "*wholly owned"* should be deleted as this requirement will exclude the provision from applying in a scenario where the capital contribution is made to a joint venture. In our view, there is no clear policy reason why interest on a loan to make a capital contribution to a joint venture, as well as a wholly owned company, should not qualify for relief.

Section 247(3) - Common Director Requirement

We believe the removal of the requirement to have a common director on the board of both the investing company, and the investee will be a helpful simplification to the operation of section 247.

Section 247(4) - First Use of Loan/Some Other Purpose

In principle, we welcome the proposal to amend the condition regarding the first use of a new loan, however, we believe some changes to the proposed wording are necessary.

We recommend that subsection (4)(b)(i)(I) should be deleted as the provision does not appear to have any clear purpose.

Subsection (4)(b)(ii)(II) provides that "*relief shall not be given in respect of a payment of an amount of interest* ***which*** *relates to an amount of interest accrued at a time when subsection (2) does not apply to the loan*". In our view, the use of the word 'which' in this context is ambiguous and it could be interpreted as denying interest relief on the qualifying element of the payment where any part of the payment pertains to a non-qualifying use of the loan. We do not believe that this is the policy intention and we consider it preferable to replace the word 'which' with the phrase 'to the extent that it'.

We consider that the proposed wording in subsection (4)(b)(ii)(II) may be ambiguous in circumstances where interest is paid in an accounting period on more than one loan. We believe the insertion of the words 'in respect of the loan' after the phrase *"an amount of interest paid"* is necessary to clarify the application of the provision.

We understand it is existing Revenue practice that where a loan is used to fund a swap agreement as an ancillary step to applying the loan for a qualifying purpose, then that does not prevent a claim for section 247 relief. The proposed subsection (4)(b)(iii) appears to put this practice on a statutory footing for loans made on or after [X date] only. As it would seem logical to put the Revenue practice on a statutory footing for all

loans, we consider that subsection (4)(b)(iii) should become subsection (4)(c) so that the provision is not limited to loans made on or after [X date].

In addition, we consider the inclusion of the words "*within a reasonable period of time*" in subsection (4)(b)(iii) are unnecessary as subsection (4)(b)(ii) already restricts the relief on interest which accrues on the loan for any period of time where the loan is not used for a qualifying purpose.

Section 247(4E) – Intra-Group Lending to Acquire Group Assets

Section 247(4E) denies interest relief as a charge in respect of interest on an intra-group loan used to finance the purchase of certain assets from another group company.

The proposal to provide relief from the restriction in section 247(4E) in certain circumstances is welcome. We note that the proposal is to provide relief by amending section 247(4E) to introduce equivalent exemptions to those in section 840A TCA 1997 to the restriction. However, there are some inherent issues with the exemptions in section 840A which need to be addressed and once resolved this should also be reflected in section 247(4E).

The insertion of section 840A(7A) by Finance Act 2025 was necessitated by the commercial requirement that external funding may only be obtainable or is centralised in one group company which it then on-lends within the group to the company that purchases the asset.

As provided in section 840A(7A)(c), the proposed amendment to section 247(4E) limits the 'maximum loan principal' upon which interest deductibility can be obtained. The principal limitation is based on either the loan principal outstanding on the borrowings of the connected seller prior to the transfer of the asset or the original principal outstanding on the initial intra-group transfer of the asset that was first within scope of the restriction.

This limitation does not reflect the commercial reality that group financing is typically arranged by reference to the market value of the asset at the time of transfer. In addition, it introduces significant administrative complexity, where assets with long economic lives have moved within a group multiple times, or where the original borrowings of the transferor group company were used to fund the purchase of several assets. In our view, the limitation on the maximum loan principal amount should be removed from section 840A and that this should also be reflected in section 247(4E)(eb).

In addition, we consider that the requirement in the proposed subsection 247(4E)(ea) that the 'only' business of the borrowing company is on-lending to the investing company or companies is unduly narrow, as in most cases a treasury company within a group will engage ancillary services in addition to the on-lending of funds to other group companies.

Section 247(4F) – Where 'Investing Company' is subject to Transfer Pricing

We welcome the proposal to disapply subsection (4F) where the lending arrangement is subject to transfer pricing rules.

Section 249(1)(a)(iii) – Re-Investment of Section 247 Loans Repaid

We believe that this proposed amendment provides a helpful clarification to ensure that a recovery of capital or deemed recovery of capital does not restrict relief where the recovered capital is applied by the investing company for a qualifying purpose.

Section 249(2)(a)(ii) – Repayment of a Capital Contribution

It is proposed to amend section 249(2)(a)(ii) to extend the recovery of capital provisions to include capital contributions as a consequence to extending section 247 relief to capital contributions. As currently drafted, we believe that the proposed amendment to

section 249(2)(a)(ii) TCA 1997 substantially risks undermining the practical application of section 247 TCA 1997 more generally.

As drafted, a capital contribution that is wholly unrelated to an entitlement to relief under section 247(2)(aa) TCA 1997 would potentially be within scope of the extended recovery of capital rules. For example, this could arise where a company made a capital contribution to a subsidiary many years ago, which is clearly not associated with a qualifying section 247 loan. If a dividend paid out of the distributable reserves resulting from that capital contribution were to give rise to a recovery of capital in relation to an unrelated borrowing, such an approach would be unworkable in practice. It is critical that groups retain the commercial flexibility to freely distribute profits without adverse consequences in such circumstances.

If the legislation cannot be progressed without removing the reference to *"capital contribution"* in section 249(2)(a)(ii) or confining the extended recovery of capital rules to apply to the repayment of capital contributions under section 247(2)(aa), then the proposals as they relate to capital contributions should not be progressed. Further stakeholder engagement should be sought in this regard.

Section 249(2)(aa)(iii) and 249(2)(ac)(v) - Multiple Recoveries of Capital

We welcome the proposal to ensure that if a transaction results in the recovery of capital affecting multiple loans, the total amount of qualifying loans treated as repaid does not exceed the total capital recovered.

However, a practical issue continues to exist where multiple section 247 loans exist within the same company as the taxpayer cannot specify the loan to which the recovery of capital relates. In our view, investing companies with multiple section 247 loans should be permitted to specify the particular loan affected, rather than restricting identification to the entity level and to scenarios where the recovery of capital event impacts more than one investing company.

Conclusion

While the proposed changes are welcome and offer improvements in certain areas, they do not represent significant simplification of sections 247 and 249. Many of the conditions in sections 247 and 249 were developed in response to specific concerns amongst policymakers in relation to identified base erosion risks.

However, extensive reforms have been implemented in Irish legislation over recent years to eliminate opportunities for base erosion. As a result, a fundamental review of section 247 is necessary to identify where any material risks may remain, including consideration of the impact of Pillar Two on such base erosion concerns. Following such a review, sections 247 and 249 should be streamlined to remove any conditions that no longer have a clear policy rationale.

The Institute would welcome the opportunity to discuss the matters raised in this submission. Please contact Anne Gunnell of this office at agunnell@taxinstitute.ie if you require any further information in this regard.